

April 27, 2005

The Regular Meeting of the Rockingham County Board of Supervisors was held on Wednesday, April 27, 2005, at 6:00 p.m. at the Rockingham County Administration Center, Harrisonburg, Virginia. The following members were present:

PABLO CUEVAS, Election District #1
CHARLES W. AHREND, Election District #2
DEE E. FLOYD, Election District #3
WILLIAM B. KYGER, JR., Election District #4
MICHAEL A. BREEDEN, Election District #5

Also present:

JOSEPH S. PAXTON, County Administrator
G. CHRIS BROWN, County Attorney
STEPHEN G. KING, Deputy County Administrator
JAMES L. ALLMENDINGER, Director of Finance
RHONDA G. HENDERSON, Director of Planning
JENNIFER M. HOOVER, Director of Public Works
DIANA C. STULTZ, Zoning Administrator
ROBERT A. SYMONS, Fire and Rescue Chief
WILLIAM L. VAUGHN, Director of Community Development
DOTTIE L. BOWEN, Deputy Clerk
DONALD F. KOMARA, Resident Engineer
Virginia Department of Transportation

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CALL TO ORDER
PLEDGE OF ALLEGIANCE
INVOCATION.

Chairman Cuevas called the meeting to order at 6:00 p.m.

Deputy Administrator King led the Pledge of Allegiance. Supervisor Breeden gave the Invocation.

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APPROVAL OF MINUTES.

On motion by Supervisor Ahrend, seconded by Supervisor Kyger and carried by a vote of 5 to 0, voting recorded as follows: AHREND - AYE; BREEDEN - AYE; CUEVAS - AYE; FLOYD - AYE; KYGER - AYE; the Board approved the minutes of the Regular Meeting held on April 13, 2005.

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PRESENTATION OF SERVICE WEAPON TO CAPTAIN RAY BREEDEN.

In accordance with Virginia Code Section 59.1-148.3, Sheriff Donald Farley presented to Captain Ray Breedon his Glock Model 27 40 caliber service weapon, Serial #FSF921. Captain Breedon will retire from County service on August 1, 2005.

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GANG TASK FORCE AND GANGS IN VIRGINIA GRANT PROGRAM.

The Board heard a presentation by Sheriff Farley concerning the Gang Task Force. On motion by Supervisor Breedon, seconded by Supervisor Kyger and carried by a vote of 5 to 0, voting recorded as follows: AHREND - AYE; BREEDEN - AYE; CUEVAS - AYE; FLOYD - AYE; KYGER - AYE; the Board authorized the County to accept Federal Grant No. 546001582 "Gangs in Virginia Grant Program," and authorized the purchase of two used vehicles for \$30,000, to be paid from the Gang Task Force budget, which is to be replaced by the grant funds after July 1, 2005.

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COYOTE CONTROL.

The Board heard a presentation by Jon W. Donaldson, Wildlife Specialist, USDA, in regard to the USDA program for identification and control of coyote damage to livestock. A question-and-answer session with the Board followed his presentation; and later, he met separately with a group of local farmers to answer their more individual questions.

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LIVESTOCK AND POULTRY IN RELATION TO HOUSING IN THE A2 ZONING DISTRICT.

The Board heard a presentation by Mitchell Dean concerning the problem with the density of livestock and poultry in relation to housing in the A2 zoning district. Mr. Dean cited property damage, noise, odors, and loss of property values for those residents neighboring, in particular, fighting cock operations.

There was unanimous agreement to ask staff to provide a "reasonable" recommendation for the Board's consideration at a future meeting.

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TRANSPORTATION DEPARTMENT.

Supervisor Floyd reiterated his complaint that, when the latest work was completed on the stop light at Port Republic Road and Route 689, the contractor did not do an adequate job in cleaning up the area. Mr. Komara said he would check into the matter.

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PUBLIC HEARING - SPECIAL USE PERMIT REQUESTS.

Chairman Cuevas announced that the following special use permit requests would be postponed until a later date.

S05-16, request of Hauns LC - Sam & Kim Wilkins - 11978 North Valley Pike, Broadway, for expansion of small engine repair shop (enclose half of the existing canopy) on property located on the northeast side of North Valley Pike (Route 11) and Arkton Road (Route 798) in Plains Magisterial District, Election District #1, zoned A2. Tax Map #67-(A)-46.

S05-23, request of Brett Aggregates, Inc., 4794 Finlay Street, Richmond, for change in condition to extend pit operating hours until 11:00 PM. on property located on the east side of East Side Highway (Route 340) approximately 1.5 miles north of Lynnwood Road (Route 708) in Stonewall Magisterial District, Election District #5, zoned A2. Tax Map #153-(A)-84.

At 7:13 p.m., Chairman Cuevas declared the meeting open for a public hearing on the following special use permit requests.

Ms. Stultz reviewed the staff recommendations for each application.

S05-17, request of Hess, Inc., 3231 Willow Run Road, Harrisonburg, for recreation inside and outside of a building on property located on the west side of Willow Run Road (Route 767) approximately 6/10 mile northeast of Fort Lynne Road (Route 910) in Central Magisterial District, Election District #2, zoned A2. Tax Map #93-(1)-4.

Gary Hess, applicant, was present to answer questions.

No opposition was expressed.

S05-18, request of Richard Stauffer, Mark Musser & Leroy Zimmerman, 1020 W. Main Street, Ephrata, Pennsylvania, for a wood and post storage yard (adjacent to a permitted wood treating facility) on property located on the southwest side of Industrial Drive (Route 1420) approximately 2/10 mile east of Harpine Highway (Route 42) in Plains Magisterial District, Election District #1, zoned M1/M2. Tax Map #51-(A)-135, 136 & 137.

Mr. Stauffer explained that his business produced fence posts and rails for agricultural use, buying the product cut and bundled. He said he planned to store the treated posts until they are loaded onto a truck or rail car and distributed to the purchasers. He noted that a self-contained, state-of-the-art treating facility, that would be entirely in a building, was planned for some time in the future. He explained that the posts would be treated with a CCA treatment of 95 percent water and 3 percent arsenic mix base, and that this type of treatment was more environmentally friendly than creosote. He assured the Board that there would be no air emission, the product would be drip-free, and stated that, when the wood was treated, a vacuum would take the leftover product and put it back into the tank. He added that there would be no noise except for the sound of the tow motors running and those would probably not be noticed.

Leroy Zimmerman, also an applicant, stated that there would be no sawing or milling.

Chairman Cuevas observed that the only issue under consideration by the Board was the matter of storing the posts and wood on the lot since the other operations were permitted under the industrial zoning classification.

Doug Chenault said he was concerned about the environment, noise and odor. He pointed out that there was odor from the poles presently stored at the site and that the operation would abut a new housing development.

Mr. Zimmerman said the creosote poles presently stored at the site were treated with creosote, and he reiterated that the future operation would not use creosote.

S05-19, request of Lawrence & Rachel Derrow, 17924 Farmhouse Lane, New Market for a second residence (for farm worker) on property located on the east side of Hulings Lane (Route 850) approximately 3/10 mile northeast of Endless Caverns Road (Route 793) in Plains Magisterial District, Election District #1, zoned A1. Tax Map #54-(A)-62.

Ms. Stultz advised that the applicant was in ill health and unable to attend the meeting. Chairman Cuevas said he had met with the applicant, who understood that the dwelling could not be used for rental purposes.

S05-20, request of Steve & Rebecca Brydger, DBA Brydgerworks, 3313 Harpine Highway, Harrisonburg for an expansion of a stain glass art studio and adding waterjet cutting on property located on the west side of Harpine Highway (Route 42) approximately 300 feet north of Buttermilk Creek Road (Route 765) in Linville Magisterial District, Election District #2, zoned A2. Tax Map #79-(10)-B2.

The applicant was present to answer questions.

No opposition was expressed.

S05-22, request of Camp Kaleidoscope, Inc., 25 Media Lane, Harrisonburg for expansion of camp/retreat for foster children (play area) on property located on the south side of Rawley Pike (Route 33) approximately 150 feet east of Media Lane (private road) in Central Magisterial District, Election District #4, zoned A2. Tax Map #108-(A)-17.

Lee VanOrden and Beth Pettit were present to answer questions.

No opposition was expressed.

S05-24, request of Ottobine Dairy, LLC, 4625 Rocby Drive, Bridgewater for a second residence (for one of the owners) on property located on the east side of Rocby Drive (private road) approximately 4/10 mile north of Spring Creek Road (Route 727) in Ashby Magisterial District, Election District #4, zoned A1.

Mr. Hurst said he wanted to put a trailer at the location and noted that Nelson Gardner, who was in favor of the request, could not be present.

No opposition was expressed.

S05-25, request of Ivan H. Rohrer, 4275 Linhoss Road, Dayton for expansion of existing fruit and produce market on property located on the west side of Silver Lake Road (Route 701) approximately 1/4 mile north of Eberly Road (Route 732) in Ashby Magisterial District, Election District #4, zoned A2. Tax Map #107-(A)-131.

The applicant was present to answer questions.

No opposition was expressed.

At 7:50 p.m., Chairman Cuevas called the regular meeting back to order.

On motion by Supervisor Ahrend, seconded by Supervisor Kyger and carried by a vote of 5 to 0, voting recorded as follows: AHREND - AYE; BREEDEN - AYE; CUEVAS - AYE; FLOYD - AYE; KYGER - AYE; subject to the following conditions, the Board approved S05-17, request of Hess, Inc. - 3231 Willow Run Road, Harrisonburg for recreation inside and outside of a building on property located on the west side of Willow Run Road (Route 767) approximately 6/10 mile northeast of Fort Lynne Road (Route 910) in Central Magisterial District, Election District #2, zoned A2. Tax Map #93-(1)-4.

- (1) The use shall be located in substantial accordance with plot plan as approved by the Board of Supervisors.
- (2) Any tents or buildings associated with this business shall comply with the Virginia Uniform Statewide Building Code, and the proper permits shall be obtained.
- (3) A commercial entrance permit shall be obtained from VDOT's Residency Office and shall be submitted to the Department of Community Development prior to obtaining final zoning approval for building permits.
- (4) The commercial entrance shall be installed and the entire fencerow associated with this special use permit shall be relocated behind the newly acquired right-of-way prior to opening day of the proposed business as required by VDOT.
- (5) Applicant shall notify the Zoning Administrator as to the date the business will be open.

- (6) For a period of two years this business may operate using port-a-potties. These port-a-potties are to be emptied after each event and shall be removed from the property during the months that the business is not in operation. After two years, applicant must obtain an on-site sewage disposal system permit from the Health Department and install the required septic. A copy of said permit and the system operation permit (following installment) shall be submitted to the Zoning Administrator..
- (7) This permit is contingent upon a site plan being submitted to and approved by the County. No permits shall be issued by the Department of Community Development and no work shall be done on the property until such time as a site plan is approved.
- (8) If the business becomes operational within one year from date of special use permit approval, the applicant may begin operation using tents and construct buildings for the uses outlined in this request at a later date and such buildings shall not be restricted to the one year period.
- (9) If the area to be used for this business expands or if uses not described herein or buildings not approved with this request are to be added to the overall plan, additional special use permits shall be required.
- (10) Off-street parking shall comply with the Rockingham County Code.
- (11) On-premise advertising sign shall comply with the Rockingham County Code, and a permit shall be obtained for any sign.
- (12) There shall be no off-premise signs allowed unless all County and VDOT requirements for outdoor advertising signs are met.
- (13) No building associated with this use shall go into operation until a certificate of occupancy is obtained from the County. No certificate of occupancy shall be issued until all other conditions of this special use permit are met.

At the request of Chairman Cuevas, on motion by Supervisor Ahrend, seconded by Supervisor Breeden and carried by a vote of 5 to 0, voting recorded as follows: AHREND - AYE; BREEDEN - AYE; CUEVAS - AYE; FLOYD - AYE; KYGER - AYE; subject to the following conditions, the Board approved S05-18, request of Richard Stauffer, Mark Musser & Leroy Zimmerman, 1020 W. Main Street, Ephrata, PA for a wood and post storage yard (adjacent to a permitted wood treating facility) on property located on the southwest side of Industrial Drive (Route 1420) approximately 2/10 mile east of Harpine Highway (Route 42) in Plains Magisterial District, Election District #1, zoned M1/M2. Tax Map #51-(A)-135, 136 & 137.

- (1) The use shall be located in substantial accordance with plot plan as approved by the Board of Supervisors.
- (2) Any buildings shall comply with the Virginia Uniform Statewide Building Code, and the proper permits shall be obtained.
- (3) A commercial entrance permit shall be obtained from VDOT's Residency Office and shall be submitted to the Department of Community Development prior to obtaining final zoning approval for building permits.
- (4) This permit is contingent upon the applicant obtaining approval from the town of Broadway to hook to town sewer. The property shall be hooked to the town sewer and verification of hook-up shall be submitted to the County Zoning Administrator prior to beginning operation of this business.

- (5) This permit is contingent upon a site plan being submitted to and approved by the County. No permits shall be issued by the Department of Community Development and no work shall be done on the property until such time as a site plan is approved.
- (6) On-premise advertising sign shall comply with the Rockingham County Code, and a permit shall be obtained for any sign.
- (7) Off-street parking shall comply with the Rockingham County Code.
- (8) There shall be no off-premise signs allowed unless all County and VDOT requirements for outdoor advertising signs are met.
- (9) This permit is contingent upon approval from Department of Environmental Quality (DEQ) for the storage of treated wood outdoors. If a permit is required by DEQ, a copy of said permit shall be submitted to the Zoning Administrator prior to beginning operation of this business. If no permit is required, a letter from DEQ stating they will not require permits shall be submitted to the Zoning Administrator prior to beginning operation of this business.
- (10) This business shall not begin operation until such time as a certificate of occupancy is issued by the County if required by the Building Official. If required, no certificate of occupancy shall be issued until all other conditions of this permit are met.

At the request of Chairman Cuevas, on motion by Supervisor Kyger, seconded by Supervisor Ahrend and carried by a vote of 5 to 0, voting recorded as follows: AHREND - AYE; BREEDEN - AYE; CUEVAS - AYE; FLOYD - AYE; KYGER - AYE; subject to the following conditions, the Board approved S05-19, request of Lawrence & Rachel Derrow, 17924 Farmhouse Lane, New Market for a second residence (for farm worker) on property located on the east side of Hulings Lane (Route 850) approximately 3/10 mile northeast of Endless Caverns Road (Route 793) in Plains Magisterial District, Election District #1, zoned A1. Tax Map #54-(A)-62.

- (1) The use shall be located in substantial accordance with plot plan as approved by the Board of Supervisors.
- (2) Residence shall comply with the Virginia Uniform Statewide Building Code, and the proper permits shall be obtained.
- (3) VDOT reserves the right to require future entrance upgrades should conditions warrant.
- (4) This permit is contingent upon applicant obtaining an on-site sewage disposal system permit from the Health Department. A copy of said permit shall be presented to the Community Development Department prior to obtaining placement permits.
- (5) Manufactured home shall be skirted and the tongue removed, unless included in the skirting, within sixty (60) days from final inspection.
- (6) This residence shall not be used for rental purposes.
- (7) This residence shall not be occupied until a certificate of occupancy is issued from the County. No certificate of occupancy shall be issued until all other conditions of this permit are met.

On motion by Supervisor Ahrend, seconded by Supervisor Breeden and carried by a vote of 5 to 0, voting recorded as follows: AHREND - AYE; BREEDEN - AYE; CUEVAS - AYE; FLOYD - AYE; KYGER - AYE; subject to the following conditions, the Board approved S05-20, request of Steve & Rebecca Brydge, DBA Brydgeworks, 3313 Harpine Highway, Harrisonburg for an expansion of a stain glass art studio and adding waterjet cutting on property located on the west side of Harpine Highway (Route 42) approximately 300 feet north of Buttermilk Creek Road (Route 765) in Linville Magisterial District, Election District #2, zoned A2. Tax Map #79-(10)-B2.

- (1) The use shall be located in substantial accordance with plot plan as approved by the Board of Supervisors.
- (2) Addition shall comply with the Virginia Uniform Statewide Building Code, and the proper permits shall be obtained.
- (3) A commercial entrance permit shall be obtained from VDOT's Residency Office and shall be submitted to the Department of Community Development prior to obtaining final zoning approval for building permits.
- (4) As required by Health Department there shall be no more than three employees other than those residing in the residence located on the property.
- (5) This permit is contingent upon a site plan being submitted to and approved by the County. No permits shall be issued by the Department of Community Development and no work shall be done on the property until such time as a site plan is approved.
- (6) Off-street parking shall comply with the Rockingham County Code.
- (7) On-premise advertising sign shall comply with the Rockingham County Code, and a permit shall be obtained for any sign.
- (8) There shall be no off-premise signs allowed unless all County and VDOT requirements for outdoor advertising signs are met.
- (9) All conditions of the 2002 special use permit shall remain in effect and shall be enforced.
- (10) This addition shall not be placed into operation until such time as a certificate of occupancy is issued by the County. No certificate of occupancy shall be issued until all other conditions of this permit are met.

On motion by Supervisor Breeden, seconded by Supervisor Kyger and carried by a vote of 5 to 0, voting recorded as follows: AHREND - AYE; BREEDEN - AYE; CUEVAS - AYE; FLOYD - AYE; KYGER - AYE; subject to the following conditions, the Board approved S05-22, request of Camp Kaleidoscope, Inc., 25 Media Lane, Harrisonburg for expansion of camp/retreat for foster children (play area) on property located on the south side of Rawley Pike (Route 33) approximately 150 feet east of Media Lane (private road) in Central Magisterial District, Election District #4, zoned A2. Tax Map #108-(A)-17.

- (1) The use shall be located in substantial accordance with plot plan as approved by the Board of Supervisors.
- (2) The entrance shared with Benedek Broadcasting must be upgraded to commercial entrance standards. An entrance permit shall be obtained from VDOT's Residence

Office and submitted to the Community Development Department within 90 days of approval of this permit.

- (3) Commercial entrance must be installed within six (6) months of approval of this special use permit.
- (4) Health Department has no objections to proposed use. However, the residence shall be used as a residence only and shall not be used as a part of this request.
- (5) This permit is contingent upon a site plan being submitted to and approved by the County. No permits shall be issued by the Department of Community Development and no work shall be done on the property until such time as a site plan is approved.
- (6) All conditions of the 2003 special use permit shall remain in effect and shall be enforced.

FEES WAIVED FOR CERTAIN NON-PROFIT ORGANIZATIONS.

On motion by Supervisor Kyger, seconded by Supervisor Breeden and carried by a vote of 5 to 0, voting recorded as follows: AHREND - AYE; BREEDEN - AYE; CUEVAS - AYE; FLOYD - AYE; KYGER - AYE; the Board agreed to waive rezoning, special use permit, inspection and other such County fees for Camp Kaleidoscope, Inc., the special use permit just approved as well as any of its future requests; and further, the Board agreed that requests for other such non-profit operations that provide a service to the community, with the County Administrator and County Attorney to make the determination as to which operations qualify to have such fees waived.

On motion by Supervisor Kyger, seconded by Supervisor Ahrend and carried by a vote of 5 to 0, voting recorded as follows: AHREND - AYE; BREEDEN - AYE; CUEVAS - AYE; FLOYD - AYE; KYGER - AYE; subject to the following conditions, the Board approved S05-24, request of Ottobine Dairy, LLC, 4625 Rocby Drive, Bridgewater for a second residence (for one of the owners) on property located on the east side of Rocby Drive (private road) approximately 4/10 mile north of Spring Creek Road (Route 727) in Ashby Magisterial District, Election District #4, zoned A1.

- (1) The use shall be located in substantial accordance with plot plan as approved by the Board of Supervisors.
- (2) Residence shall comply with the Virginia Uniform Statewide Building Code, and the proper permits shall be obtained.
- (3) This permit is contingent upon applicant obtaining an on-site sewage disposal system permit from the Health Department. A copy of said permit shall be presented to the Community Development Department prior to deed exception approval.
- (4) Manufactured home shall be skirted and the tongue removed, unless included in the skirting, within sixty (60) days from final inspection.
- (5) This residence shall not be used for rental purposes.

- (6) This residence shall not be occupied until a certificate of occupancy is issued from the County. No certificate of occupancy shall be issued until all other conditions of this permit are met.

On motion by Supervisor Kyger, seconded by Supervisor Breeden and carried by a vote of 5 to 0, voting recorded as follows: AHREND - AYE; BREEDEN - AYE; CUEVAS - AYE; FLOYD - AYE; KYGER - AYE; subject to the following conditions, the Board approved S05-25, request of Ivan H. Rohrer, 4275 Linhoss Road, Dayton for expansion of existing fruit and produce market on property located on the west side of Silver Lake Road (Route 701) approximately 1/4 mile north of Eberly Road (Route 732) in Ashby Magisterial District, Election District #4, zoned A2. Tax Map #107-(A)-131.

- (1) Use shall be located in substantial compliance with the plot plan as approved.
- (2) Building shall comply with the Virginia Uniform Statewide Building Code and the proper permits shall be obtained.
- (3) VDOT requires the right to require entrance upgrades should future conditions warrant.
- (4) This permit is contingent upon a site plan being submitted to and approved by the County. No work shall be done on the property until such time as a site plan is approved.
- (5) Parking shall comply with the Rockingham County Code as amended.
- (6) On-premise advertising sign shall comply with the Rockingham County Code and permits shall be obtained for any sign.
- (7) No off-premise signs shall be allowed unless all VDOT and County regulations are met.
- (8) Applicant shall obtain elevation shots from a Certified Land Surveyor to determine if building location is in the 100-year floodplain. A copy of said elevation shots shall be submitted to the Department of Community Development prior to obtaining permits. If building location is in the 100-year floodplain, elevation requirements shall be met.
- (9) A certificate of occupancy shall be obtained from the County, and the business shall not begin operation until such time as the certificate of occupancy is received.

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PUBLIC HEARING - REZONING REQUEST.

At 8:00 p.m., Chairman Cuevas declared the meeting open for a public hearing on the following rezoning request.

RZ05-9, request of Virginia Rail Services, Inc., 1225 Pleasant Valley Road, Harrisonburg, 22801, to rezone 3.9 acres from M2 (Light Industrial) to M1-C (General Industrial with Conditions) on tax parcels 124C (A) 1 and 124 (A) 94A. The site is located on the north side of Pleasant Valley Road (Route 679) approximately 850

feet east of Pleasants Drive (Route 898) in Election District 3. The Comprehensive Plan designates this area as Industrial.

Ms. Henderson reviewed the staff report on the rezoning request, including the Planning Commission recommendation for approval, stating "The applicant is seeking to rezone the property in order to allow for shipments arriving by rail to be stored on the site for a short period of time before being transferred to truck. The County's Comprehensive Plan designates the area of the request as the location of future industrial uses. This request is not expected to negatively impact the surrounding area."

Jim Suter, representing the applicant, read a statement in favor of the proposal.

No opposition was expressed.

At 8:04 p.m., Chairman Cuevas declared the public hearing closed and called the regular meeting back to order.

On motion by Supervisor Floyd, seconded by Supervisor Breeden and carried by a vote of 5 to 0, voting recorded as follows: AHREND - AYE; BREEDEN - AYE; CUEVAS - AYE; FLOYD - AYE; KYGER - AYE; subject to the following proffers, the Board approved RZ05-9, request of Virginia Rail Services, Inc., 1225 Pleasant Valley Road, Harrisonburg, 22801, to rezone 3.9 acres from M2 (Light Industrial) to M1-C (General Industrial with Conditions) on tax parcels 124C (A) 1 and 124 (A) 94A. The site is located on the north side of Pleasant Valley Road (Route 679) approximately 850 feet east of Pleasants Drive (Route 898) in Election District 3.

VIRGINIA RAIL SERVICES, INC.
RZ05-9

- A. Use of the site is limited to receiving, unloading, and loading rail cars containing various products.
- B. Products received by rail or shipped out by rail would be regulated by Virginia Statewide Fire Prevention Code.
- C. Some products may need to be stored in the open for several days or longer depending on truck availability and/or a lack of space at the customer's facility. This storage would be neat and orderly.

PUBLIC HEARING - REZONING REQUEST.

At 8:06 p.m., Chairman Cuevas declared the meeting open for a public hearing on the following rezoning request.

RZ05-2, request of Associated Developers, LLC, 370-I Neff Avenue, Harrisonburg, to rezone a total of 141.837 acres: 77.604 acres on tax map 126 (A) 119 from A1 (Prime Agricultural), 63.705 acres on tax map 126 (A) 120 from A2 (General Agricultural), and .528 acre on tax map 126 (8) 1 from A2 (General Agricultural) to R3 Conditional (General Residential with Conditions). The site is located on the north side of Spotswood Trail (Route 33) approximately 1400 feet east of Massanetta Springs Road (Route 687) in Election District #3. The Comprehensive Plan designates this area as Community Residential & Agricultural Reserve. R3 allows 4.3 single family detached dwelling units per acre.

Ms. Henderson reviewed the particulars of the request.

She advised that on December 17, 2004, the Planning Commission tabled the request, stating that the annual review of the Comprehensive Plan would soon be under way. She noted that the site "predominantly lies in the Agricultural Reserve and is surrounded on three sides by agricultural uses. The Comprehensive Plan defines Agricultural Reserve as areas planned for agricultural uses and uses that support agriculture. Residential development in an area designated as Agricultural Reserve is not consistent with the County's Comprehensive Plan.

She reported that on April 5, 2005, "based on the existing Comprehensive Plan land use designation and the still-underway annual Plan review, the Planning Commission recommended denial.

She stated that the following revised proffers were received on April 20, 2005.

In addition to the existing proffers, the applicant is proffering a 50-foot undeveloped buffer along the northern boundary line and along half or more of the western and eastern boundary lines; this area may be landscaped and/or used for a community walking trail. An additional 50-foot building setback from the buffer is proffered to remain free of permanent residential structures.

Todd Rhea, representing the applicant, read and provided for the record the following statements.

CRITERIA FOR APPROVING REZONING APPLICATIONS
Comprehensive Plan for 2020 and Beyond, Section II, Page 2-47

RESIDENTIAL REZONING REQUESTS WITHIN
THE URBAN GROWTH AREAS

- ◆ Location. Within a defined Urban Growth Area [YES]
- ◆ Public Utilities. Served by public water and sewer [YES]
- ◆ Road Access. Located along the U.S. Route 33 major arterial roadway; Proffers of adequate and safe road access with improvements to be coordinated/funded by applicant [YES]
- ◆ Public Facilities and Amenities. Proffers of 10-12 acres of open space w/ walking trails and designated play areas [YES]

- ◆ **Interparcel Access.** Will be provided and constructed per Plan requirements [YES]
- ◆ **Pedestrian Access.** Proffers of internal trail system and safety street lighting [YES]
- ◆ **Buffers.** 50' boundary proffer plus 50' building setback proffer; Large central hill retained as A-2 by Blose Family (16 acres) [YES]

Public Facilities Costs Density limited by proffer to 2.1 units per acre (less than half allowable in R-3); Development phased for 6-year development straddling the 2010 and 2020 planning periods [YES]

- Tonight we will be using three people to make primary presentation in favor of the application to rezone the Blose Farm for residential use
- First, I will cover both the big picture County land development goals and parcel specific technical land use criteria of the rezoning request
- Next, Walt Trobaugh will provide you with details of the proposed development, and will outline the history and commitment to quality development that Associated Developers brings to the table
- Finally, Ellen Blose will speak to the personal family need to rezone their farm for productive use, and the Blose family's intention to remain on the property by retaining a 16-acre family homesite covering the central hill on the property.

I will begin my presentation by briefly reviewing overall county land development goals, as this big picture background underpins the merits of the Blose farm request

The board directed a review of the agriculture reserve definition and usage in late 2004.

-The Planning Commission convened the Citizens Advisory Committee (CAC) to confirm their intentions about the Agricultural Reserve definition. In February, the CAC unanimously recommended a change to Agricultural Reserve usage within Urban Growth Area's (UGA's) to allow growth to be encouraged where public utilities were present, and where the rezoning requests met the detailed rezoning criteria spelled out within the Plan itself.

-In March, after several work sessions, the Planning Commission has provisionally adopted a change to the Agricultural Reserve designation within Urban Growth Areas, consistent with the CAC recommendation. This change would create a Transition zone within the UGA's where growth is anticipated and encouraged. This change would put the entire Blose property in a designated Residential Growth Area or a Transition Area rather than an Agricultural Reserve area.

-Given these actions to date, the advanced stage of the process and the clear need to create adequate residential lot supply to meet normal demand anticipated under the Comprehensive Plan, we believe the time is now to move forward on approval of the Blose Farm rezoning request.

A second important consideration is the current shortage of residential lots located on public water and sewer

-There is currently a growing shortage of residential lots in Rockingham County served by public water and sewer.

- Planning Staff recently outlined these issues in detail to the Board at its recent annual retreat. The Staff has also updated their figures and growth trend assumptions to reflect the healthy economic expansion underway in the County.

-The lot shortage situation is confirmed by a brief look at existing major subdivisions within the UGA surrounding the City of Harrisonburg, which is the primary UGA within Rockingham County. Within this UGA, Belmont, Battlefield, Lakewood, Monte Vista and Barrington are full, and Crossroads Farm is on a 25 or 30 lot per year restriction. The Towns of Bridgewater and Dayton have very few to no available residential building lots. With many new lots needed on public water and sewer to meet current moderate demand and the County's 80/20 goal, we need to create lots today to keep our community goals on track.

-This looming residential lot shortage has also shown up quite clearly in rapidly increasing lot prices. We are now seeing basic residential lots in well into six figure price ranges, double the price of two to three years ago. Without more lots coming on line very soon, this situation will result in serious reassessment issues for the County in 2006, and affordability issues for families in the average household annual income range of \$45,000 per year.

"Addressing the often-stated "threat to agricultural lands and heritage" from development. We can have both healthy, directed growth and agricultural preservation by following the dividing line of the established UGA's and the availability of adequate public water and sewer service. With a healthy economy, which benefits us all, we will have population growth. The County has wisely directed this growth to occur within UGA's with 80% on public water and sewer. In order to avoid building pressure to develop agricultural reserve areas outside of the UGA's this Board must permit the creation of enough residential lots within UGA's on water and sewer to meet your base demand. Failure to do so will merely drive people looking for a place to live further out into the County. That is where the overall, big picture of county land development stands, let's now take a look at how the Blose farms fits into the criteria for residential rezonings within urban growth areas under the existing comprehensive plan. The Comprehensive Plan clearly spells out detailed criteria for evaluating residential rezoning requests in Rockingham

County. We have analyzed and formulated the Blose Farm request to fit these criteria like a glove. Here is an exhibit showing how the Blose Farm meets all criteria for rezoning found on page 2-47 and following in the Comprehensive Plan. [Reviewed Chart shown above.] As you can see, the Blose Farm is a prime candidate for rezoning under the objective criteria developed by the CAC and Planning Commission and approved by the Board in the Comprehensive Plan. Your applicants have also heard the stated objections raised by the only two citizens speaking in opposition at the previous public hearing, and have taken concrete steps to address those concerns via the retained hill area by the Blose family and 100' boundary development buffer zone to protect adjoining owners. Finally, and as importantly, there exists the impact of approving this request on the Blose family. Mrs. Blose is here tonight to make that case directly, and all of you are aware of the reality that the Blose family for some time been has unable to economically farm the family lands in question, or successfully rent it out as a productive dairy for others to farm. Currently, Mrs. Blose and the family have no intent or ability to farm the tract. There is also little demand for an agricultural parcel in this location lying adjacent to the busy Route 33 corridor. In conclusion, your applicants are responsible and proven local developers who have a track record of attractive and well-planned developments in the local community. Associated Developers have committed to a measured and responsible development of the Blose Farm in moderate stages over a multi-year period lying on both sides of the 2010 Comprehensive Plan phasing date, with monetary contributions to the improve the safety the existing Route 33 Battlefield entrance, and a proffered buffer to protect surrounding owners who choose to keep their properties in an agricultural use. This rezoning is squarely consistent with all criteria for rezoning set out in the Comprehensive Plan, furthers the larger needs and goals of development in Rockingham County, and provides fairness to the Blose family. We would respectfully ask for your vote to approve the request this evening. I will now turn the presentation over to Mr. Trobaugh for more detail on the proposed development."

Walt Trobaugh, III, described various developments located in the County which were built by Associated Developers. He noted that the 50-foot buffer would be a green space/common area, walking/jogging trails would be installed. He stated that no structure would be within 100 feet of the property line and that all of the single-family lots would be sold to individuals or to small builders; with no building by Associated Developers on those lots. He pointed out that there would be bigger lots with less density abutting the agricultural areas. He said the duplexes would be fee simple, and the townhouses would be five or six lots that would be sold separately. He stated that, when Associated Developers planned the project, they thought it was within the requirements of the Comprehensive Plan. He said the lots would be within the \$60,000 range with about \$400,000 type of houses. He said the houses would be around \$500,000, and the duplexes would be approximately \$200 to \$250,000. He added that the townhouses would sell for about \$155,000.

Ellen Blose, owner of the property, said it was not suitable for agriculture. She stated that three renters had tried to farm it and they were not successful. She

said she thought the back of the property would be useless with the front designated for community development. She pointed out that the surrounding farmers have road access. She said she had retained the steepest part of the property for her homestead.

John Brown, realtor, said he had a list of people who wanted to buy lots and there would not be enough available for all of those who need them. He was in favor of the rezoning.

Virginia Burtner, neighboring farmer, expressed concerns about a concentrated development abutting agriculturally zoned land. She pointed out an additional waterway not shown on the staff map, which went through the property and onto her land; and informed the Board that her family obtained its water from that waterway. She stated that her property already received a substantial amount of water runoff from the site in question. She noted her concern that this problem would be worsened if the site were developed. She asked that the request be denied.

Juanita Burtner, neighbor, said she had a cow/calf operation and she was opposed to the request. She expressed concerns about future complaints about the surrounding farm operations if the site was developed for residences. She was also concerned about erosion and the steep slopes on the site. She noted concern about water contamination, increases in future property assessments, and loss of farmland.

William Smith objected for farmland being rezoned for residences and the threat "intensive development" would pose to the adjoining farms. He expressed concern about additional traffic on an already overburdened Route 33. He said the site had been neglected and should be brought back into use as a farm.

Ted Byrd, manager of the farm to the west, said his water lines and survey access road may be affected. He noted that, if this property was rezoned, the same consideration should be given to the other farm owners in the area.

Ms. Henderson said the building could be closer than 100 feet. She said there was "nothing that could keep a water line from happening."

At 9:12 p.m., Chairman Cuevas closed the public hearing and called the regular session back to order.

Supervisor Floyd said he had "serious considerations about the extension of growth in that area. He pointed out that the Board had asked the Planning Commission to review the Comprehensive Plan's "Urban Growth Area" definition, and said he thought action should be deferred until a recommendation was reviewed by the Board.

On motion by Supervisor Floyd, seconded by Supervisor Kyger and carried by a vote of 5 to 0, voting recorded as follows: AHREND - AYE; BREEDEN - AYE; CUEVAS - AYE; FLOYD - AYE; KYGER - AYE; the Board tabled RZ05-2, request of

Associated Developers, LLC, 370-I Neff Avenue, Harrisonburg, to rezone a total of 141.837 acres: 77.604 acres on tax map 126 (A) 119 from A1 (Prime Agricultural), 63.705 acres on tax map 126 (A) 120 from A2 (General Agricultural), and .528 acre on tax map 126 (8) 1 from A2 (General Agricultural) to R3 Conditional (General Residential with Conditions). The site is located on the north side of Spotswood Trail (Route 33) approximately 1400 feet east of Massanetta Springs Road (Route 687) in Election District #3.

PUBLIC HEARING - PROPOSED ZONING ORDINANCE AMENDMENT.

At 9:19 p.m., Chairman Cuevas declared the meeting open for a public hearing on the following proposed Zoning Ordinance amendment.

Ms. Stultz reviewed the particulars of the proposal, including the Planning Commission's recommendation for approval.

OA05-2, amendment to Chapter 17 (Zoning Ordinance) of the Rockingham County Code to allow residential living quarters for someone who is associated with a business on the same property by special use permit in the B-1 (General Business) and B-2 (Rural Business) zoning districts.

There were no requests to speak.

At 9:20 p.m., Chairman Cuevas closed the public hearing and called the regular meeting back to order.

On motion by Supervisor Ahrend, seconded by Supervisor Kyger and carried by a vote of 5 to 0, voting recorded as follows: AHREND - AYE; BREEDEN - AYE; CUEVAS - AYE; FLOYD - AYE; KYGER - AYE; the Board approved the following amendment to the Zoning Ordinance.

OA05-2
PROPOSED AMENDMENT TO CHAPTER 17
(ZONING ORDINANCE) OF THE ROCKINGHAM COUNTY CODE

INTENT: To allow residential living quarters for someone who is associated with a business on the same property.

HISTORY On April 23, 1997 an ordinance was adopted under Section 17-118 that allowed only one dwelling by right except, in A1, A2 and RS1, where additional

dwelling could be allowed by special use permit with 15 acres required for each additional dwelling.

In 1998, staff realized there was a conflict with this new ordinance and other parts of the zoning ordinance that allowed by right living quarters for persons employed on the premises in all district except A1, RR1, PG, M1, and M2. In districts that permitted the living quarters for persons employed on the premises, limits were not placed on the number of dwellings and the acreage requirements. Because of that conflict, an ordinance was adopted that same year that removed from accessory use by right living quarters for persons employed on the premises.

While that took care of the possible conflict resulting between those two ordinances, we have now found that, because residences are not a permitted use in a business district, a business owner could no longer live on the same property as his business. However, our ordinance still permits, by special use permit, an individual residential use not associated with a permitted use in the B-1 District.

Inasmuch as it is more important for someone owning a business to be allowed to live on the property than it is for someone not associated with a business, staff proposes the following ordinance amendment.

AMEND:

B1 Zoning District.

Section 17-92. Special uses.

(g) One individual residential use not dwelling unit associated with a permitted use.

B2 Zoning District.

Section 17-97. Special uses.

(p) One dwelling unit associated with a permitted use.

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CLOSED MEETING.

On motion by Supervisor Ahrend, seconded by Supervisor Kyger and carried by the following vote: AHREND - AYE; BREEDEN - AYE; CUEVAS - AYE; FLOYD - AYE; and KYGER - AYE; the Board recessed the meeting from 9:21 p.m. to 10:57 p.m. for a closed meeting pursuant to Section 2.2-3711(7) and (3) regarding consultation with legal counsel and real estate acquisition.

At 10:57 p.m., Chairman Cuevas called the meeting back to order and the following motion was adopted.

MOTION: SUPERVISOR AHREND RESOLUTION NO: X05-03
SECOND: SUPERVISOR KYGER MEETING DATE: APRIL 27, 2005

CERTIFICATION OF CLOSED MEETING

WHEREAS, the Rockingham County Board of Supervisors has convened a Closed Meeting on this date pursuant to an affirmative recorded vote and in accordance with the provisions of The Virginia Freedom of Information Act; and

WHEREAS, Section 2.2-3712 of the Code of Virginia requires a certification by this Board of Supervisors that such Closed Meeting was conducted in conformity with Virginia law;

NOW, THEREFORE, BE IT RESOLVED that the Rockingham County Board of Supervisors hereby certifies that, to the best of each member's knowledge, (i) only public business matters lawfully exempted from open meeting requirements by Virginia law were discussed in the Closed Meeting to which this certification resolution applies; and (ii) only such public business matters as were identified in the motion convening the Closed Meeting were heard, discussed or considered by the Board of Supervisors.

VOTE:

AYES: AHREND, BREEDEN, CUEVAS, FLOYD, KYGER

NAYS: NONE

ABSENT: NONE

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COMMUNITY ASSOCIATION FOR RURAL TRANSPORTATION ("CART").

Administrator Paxton read the following statement.

It has been brought to the attention of the Board of Supervisors that the expansion of the transit services provided by the Community Association for Rural Transportation (CART) has created some cash flow problems for the not for profit agency.

The Board is sensitive to the needs of the County residents that are utilizing the service and will work with CART to allow them time to develop a long-term plan to fund these services.

Therefore, the Board will provide a short-term loan to CART in an amount up to \$120,000 until June 30, 2005, and directs the County Administrator and County Attorney to take such steps as necessary to secure such loan.

On motion by Supervisor Kyger, seconded by Supervisor Ahrend and carried by a vote of 5 to 0, voting recorded as follows: AHREND - AYE; BREEDEN - AYE; CUEVAS - AYE; FLOYD - AYE; KYGER - AYE; the Board approved this recommendation.

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ADOPTION OF AMENDMENT TO FY 2004-05 BUDGET; ADOPTION AND APPROPRIATION OF BUDGET FOR FISCAL YEAR 2005-2006; AND SETTING OF TAX RATES FOR CALENDAR YEAR 2005 AND FISCAL YEAR 2005-2006.

Supervisor Kyger made the following statement:

1. TRANSACTION INVOLVED: Consideration and adoption of a budget, related matters such as tax rates, and other issues concerning schools.

NATURE OF PERSONAL INTEREST IN THE TRANSACTION: I am an employee of the Rockingham County School Board. Therefore, I am affected by this Board's decisions concerning school funding and similar issues.

3. As a teacher, I am a member of an occupation the members of which are affected by the transaction specified in paragraph 1.
4. I am able to participate in the transactions fairly, objectively, and in the public interest.

On motion by Supervisor Ahrend, seconded by Supervisor Breeden and carried by a vote of 5 to 0, voting recorded as follows: AHREND - AYE; BREEDEN - AYE; CUEVAS - AYE; FLOYD - AYE; KYGER - AYE; the Board amended the Fiscal Year 2004-05 Budget and adopted the Fiscal Year 2005-06 Budget:

	EXPENDITURES			
	BUDGETED FY 04-05	AMENDMENTS FY 04-05	AMENDED FY 04-05	PROPOSED FY 05-06
<u>GENERAL FUND</u>				
				\$
General Government Administration	\$ 4,553,940	\$ -	\$ 4,553,940	4,867,430
Judicial Administration	2,968,761	0	2,968,761	2,771,000
Public Safety	14,628,259	0	14,628,259	14,928,112
Public Works	1,379,541	0	1,379,541	1,423,609
Human Services	1,191,724	0	1,191,724	1,319,185
Parks, Recreation & Cultural	1,685,446	0	1,685,446	1,918,460
Community Development	2,317,691	0	2,317,691	2,161,378
Contributions	484,900	0	484,900	507,235
Contingency	354,297	0	354,297	500,000
Other Expenses	81,000	0	81,000	65,000
Transfers to Other Funds	41,058,835	700,000	41,758,835	49,825,669
Debt Service - County	572,231	0	572,231	571,369
Debt Service - Schools	<u>4,976,309</u>	<u>0</u>	<u>4,976,309</u>	<u>4,888,277</u>
				\$
TOTAL - GENERAL FUND	<u>\$ 76,252,934</u>	<u>\$ 700,000</u>	<u>\$ 76,952,934</u>	<u>85,746,724</u>
				\$
Capital Projects Fund	\$ 7,980,436	\$0	\$ 7,980,436	7,705,125
School Capital Projects Fund	11,000,000	0	11,000,000	7,800,000
School Fund	87,983,263	0	87,983,263	92,833,641
School Cafeteria Fund	3,828,100	0	3,828,100	3,978,025
School Textbook Fund	896,433	0	896,433	685,373
Massanutten Technical Center Fund	4,487,330	0	4,487,330	4,461,338
E911 Communications Fund	5,535,476	0	5,535,476	8,398,090
Asset Forfeiture Fund	80,000	0	80,000	80,000
Harrisonburg-Rockingham Soc Serv				
Dist	15,248,118	0	15,248,118	17,106,065
Central Stores Fund	28,000	0	28,000	35,000
Utilities Fund	6,379,880	700,000	7,079,880	3,637,850
Lilly Subdivision Sanitary District	24,065	0	24,065	27,830
Smith Creek Water & Wastewater Auth	814,150	0	814,150	258,105
Countryside Sanitary District	239,710	0	239,710	125,925
Penn Laird Sewer Authority	0	0	0	1,043,800
Solid Waste Fund	4,555,039	0	4,555,039	3,545,773

Human Resources Rental Fund	<u>233,672</u>	<u>0</u>	<u>233,672</u>	<u>233,672</u>
TOTAL EXPENDITURES	<u>\$ 225,566,606</u>	<u>\$1,400,000</u>	<u>\$226,966,606</u>	<u>\$237,702,336</u>

REVENUES

	BUDGETED FY 04-05	AMENDMENTS FY 04-05	AMENDED FY 04-05	PROPOSED FY 05-06
<u>GENERAL FUND</u>				
				\$
General Property Taxes	\$ 43,675,000	\$0	\$ 43,675,000	46,165,000
Other Local Taxes	7,068,000	0	7,068,000	7,594,000
Other Local Revenue	5,780,426	0	5,780,426	5,962,810
State Revenue	13,972,017	0	13,972,017	14,500,823
Federal Revenue	1,217,713	0	1,217,713	979,623
Balance Carried Forward	<u>4,539,778</u>	<u>700,000</u>	<u>5,239,778</u>	<u>10,544,468</u>
				\$
TOTAL GENERAL FUND	<u>\$ 76,252,934</u>	<u>\$ 700,000</u>	<u>\$ 76,952,934</u>	<u>85,746,724</u>
				\$
Capital Projects Fund	\$ 7,980,436	\$0	\$ 7,980,436	7,705,125
School Capital Projects Fund	11,000,000	0	11,000,000	7,800,000
School Fund	87,983,263	0	87,983,263	92,833,641
School Cafeteria Fund	3,828,100	0	3,828,100	3,978,025
School Textbook Fund	896,433	0	896,433	685,373
Massanutten Technical Center	4,487,330	0	4,487,330	4,461,338
E911 Communications Fund	5,535,476	0	5,535,476	8,398,090
Asset Forfeiture Fund	80,000	0	80,000	80,000
Harrisonburg-Rockingham Soc Serv Dist	15,248,118	0	15,248,118	17,106,065
Central Stores Fund	28,000	0	28,000	35,000
Utilities Fund	6,379,880	700,000	7,079,880	3,637,850
Lilly Subdivision Sanitary District	24,065	0	24,065	27,830
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Penn Laird Sewer Authority	0	0	0	1,043,800
Solid Waste Fund	4,555,039	0	4,555,039	3,545,773
Human Resources Rental Fund	<u>233,672</u>	<u>0</u>	<u>233,672</u>	<u>233,672</u>
TOTAL REVENUES	<u>\$ 225,566,606</u>	<u>\$1,400,000</u>	<u>\$226,966,606</u>	<u>\$237,702,336</u>

On motion by Supervisor Ahrend, seconded by Supervisor Breeden and carried by a vote of 5 to 0, voting recorded as follows: AHREND - AYE; BREEDEN - AYE; CUEVAS - AYE; FLOYD - AYE; KYGER - AYE; the Board voted to set the rate of \$3.00 per telephone access line for the Enhanced 911 tax for the next fiscal year, starting July 1, 2005, and to establish the following rates for property taxes for calendar year 2005:

TAX RATES:

<u>Classification of Tax</u>	<u>2005</u>
Real Estate	\$.71
Personal Property	2.80
Recreational Vehicles	2.80
Machinery & Tools	2.55
Merchants Capital	.87
Farm Machinery	.44

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COUNTY ADMINISTRATOR'S STAFF REPORT.

The Board received and reviewed Mr. Paxton's staff report dated April 21, 2005, including information concerning a recent meeting with the six town managers to discuss matters of mutual concern; Lakewood sewer project; landfill progress; LEOS coverage; and Plains Elementary School.

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COUNTY ATTORNEY'S STAFF REPORT.

The Board received and reviewed Mr. Brown's staff report dated April 22, 2005, including information concerning restrictive covenants for the County's Technological and Industrial Park.

On motion by Supervisor Ahrend, seconded by Supervisor Kyger and carried by a vote of 5 to 0, voting recorded as follows: AHREND - AYE; BREEDEN - AYE; CUEVAS - AYE; FLOYD - AYE; KYGER - AYE; the Board approved the covenants as follows.

**Declaration of Covenants and Restrictions of
Rockingham County Technology and Industrial Park**

THIS DECLARATION is made this ____ day of April, 2005, by the COUNTY OF ROCKINGHAM, VIRGINIA, a political subdivision of the Commonwealth of Virginia (herein called the "Declarant").

R E C I T A L S :

1. Declarant is the owner of all of the real property (the "Property") set forth and described on that certain plat (the "Plat") entitled "Title Survey of 361.41 Acres Standing in the Name of Rockingham County, Virginia, City of Harrisonburg and Linville District and Central District, Rockingham County, Virginia," dated October 19, 2004, made by David Lee Ingram, Land Surveyor, and attached hereto, which Plat is made a part hereof and incorporated herein by reference.
2. The Property set forth on the Plat comprises all of the Rockingham County Technology and Industrial Park (the "Park").
3. The Property will be subdivided into numbered lots from time to time.
4. Declarant intends to sell and convey said lots and before doing so desires to subject them to and impose upon them mutual and beneficial restrictions, covenants, conditions, and charges (collectively referred to herein as "Protective Covenants"), under a general plan and scheme of improvement for the benefit and compliment of all the lots in the Park and of the future owners of said lots.

NOW, THEREFORE, Declarant hereby declares that all of the numbered lots created from the Property in the Park shall be held, conveyed, hypothecated, encumbered, leased, rented, used, occupied and improved subject to the following Protective Covenants, all of which are declared and agreed to be in furtherance of a plan for the

subdivision, improvement and sale of said lots and are established and agreed upon for the purpose of enhancing and protecting the value, desirability and attractiveness of the Park, including, without limitation, the Property. All of the Protective Covenants shall run with the land and shall be binding on all parties having or acquiring any right, title or interest in and to the Property or any parts thereof subject to such Protective Covenants.

1.1 Statement of Purpose

The goal in the development of the Park is the creation of a technology and industrial park designed to protect and enhance long term property values and provide a pleasant and productive working environment. The Park will be developed and maintained with an attractive, aesthetically pleasing setting with high quality buildings integrated into a natural landscaped environment. To achieve these goals, the Park shall be improved with attractive, well-spaced buildings that are well constructed, durable, and easily maintained. Further, all development within the Park shall occur in a planned, compatible fashion with respect for both the inherent natural environment and the total investment of the Park's corporate community. These Protective Covenants are established and promulgated in the interest of promoting this goal in a manner that encourages planning and design consistent with this goal and to:

1. Protect the owners and tenants of parcels against such improper development and use of surrounding parcels as will depreciate the value and use of their parcels.
2. Prevent the erection on the property of structures constructed of improper or unsuitable materials or with improper quality and methods of construction.
3. Ensure reasonably consistent development of the property in keeping with the overall goals of the Park to promote quality development.
4. Encourage and ensure the erection of attractively designed, permanent improvements appropriately located within the property in order to achieve harmonious appearance and function.
5. Ensure the construction of adequate off-street parking and loading facilities.
6. Establish and preserve public open spaces for the enjoyment and benefit of occupants, tenants, owners, and the public.
7. Promote the compatibility of the development and use of parcels with the integrity, beauty, and character of the environment.
8. Generally promote the welfare and safety of occupants, tenants, and owners of parcels.

1.2 Applicability and Effect

These Protective Covenants are applicable to all numbered parcels located within the areas of the Park and shall become effective and in full force upon recordation in the Rockingham County Circuit Court Clerk's office. Other lands on the Property designated by Declarant from time to time as parcels intended for surface water management and other public or common uses are specifically excluded from these Protective Covenants.

1.3 Definitions

The terms indicated in boldface type below shall have the accompanying meaning for purposes of these Protective Covenants.

"Aggressive Non-Native Species" shall mean those species of plants which are not indigenous to Rockingham County and which, when planted in the County, can be expected to spread quickly beyond its immediate location, e.g., by rapid growth excessive sucker growth, allelopathy, out-competing native species, prolific reproduction, or wide dissemination of seeds.

"Rockingham County" or **"County"** shall mean Rockingham County, Virginia, a political subdivision of the Commonwealth of Virginia.

"Canopy Coverage" shall mean the area covered by the tree stems, branches, and leaves as viewed overhead.

"Diameter Breast Height" shall mean the diameter in inches of a tree measured at four and one-half feet above the existing grade.

"Landscaped Area" shall mean all parts of the site which are not covered by buildings or paving, and which are not being set aside as wooded or meadow areas.

"Large Tree" shall mean a tree with a mature height greater than 40' and a mature spread greater than a 20' diameter based upon recognized texts. All other trees are considered small trees for these covenants.

"Meadow Areas" shall mean natural or naturalized grasslands which are to be mowed or "bush-hogged" only occasionally, e.g., twice per year.

"Nuisance Non-Native Species" shall mean those species of plants which are not indigenous to Rockingham County and which, when planted here, can be expected to produce unpleasant odors, prolific fruit seeds, excessive trash or twig drop, or hazards to the general public, such as skin irritation.

"Parcel" shall mean any lot or area, excluding publicly owned greenways and roads, within the Park.

"Park" shall mean Rockingham County Technology and Industrial Park.

"Recreational Area" shall mean that portion of the Park designated by Rockingham County for public recreational use at the time of effect of these Protective Covenants.

"Wooded Areas" shall mean existing or re-forested areas where maintenance is minimal, and where a natural wooded appearance is expected. Wooded areas shall be measured from the furthest extents of tree canopies/driplines.

1.4 Permitted and Prohibited Uses

1.4.1 Permitted Uses

The following uses are permitted and planned to be established on parcels:

1. Industrial, manufacturing, and processing as allowed by the specific underlying zoning of Rockingham County.
2. Light industrial, wholesaling, warehousing, distribution, etc., as allowed by the specific underlying zoning of Rockingham County.
3. Commercial uses as allowed by the specific underlying zoning of Rockingham County for those portions of the Park zoned for commercial use.

1.4.2 Prohibited Uses

1. Residential uses of any kind.
2. Noxious or offensive activities which may be or become an annoyance or nuisance to the owner, tenant, or occupant of other parcels within the property by reasons of the excessive emission of fumes, odors, glare, vibration, gases, radiation, dust, liquid or solid waste, smoke, noise, or other hazards.
3. Sawmills and planing mills.
4. Contractor equipment storage yards.
5. Coal and wood yards.
6. Truck stops, terminals, and complexes.
7. State highway maintenance facilities.
8. Manufacture and sale of pottery and figurines or other similar ceramic products, including ceramics studios.
9. Cabinet, furniture and upholstery shops.
10. Boat manufacturing.
11. Monumental stone works.
12. Wholesale businesses and storage warehouses.
13. Gasoline stations or related uses.

1.5 Development Standards

1.5.1 Architectural Review Committee

A relatively wide variety of architectural design and materials shall be permitted. However, it is intended that a basic harmony of architecture shall prevail among all development so that no improvement shall detract from the appearance of the overall development. Individuality and creativity are encouraged provided that blending of design into the parcel's surrounding context is achieved. The general design context must reflect a high quality corporate image.

1. Submission required. Plans and specifications shall be prepared, and submitted to the Architectural Review Committee (herein called "Committee") for approval of any structure or improvement whatsoever to be erected on or moved upon or to any numbered lot. The plans and specifications shall show the proposed location thereof on any numbered lot or lots, the construction material, the roofs and exterior color schemes. The plans and specifications and any later changes or additions after initial approval thereof, and any exterior remodeling, reconstruction, alterations, or additions

thereto on any numbered lot shall be subject to and shall require before any work is commenced the approval in writing of the Committee, as the same is from time to time composed. No new construction of buildings, utilities, signs, screens, fences, pavements, landscaping, or other facilities may be initiated without approval of plans by the Committee.

2. Committee Membership. The Committee shall be composed of three (3) members to be appointed by the Board of Supervisors of Rockingham County, Virginia (herein called "Board"). Committee members shall be subject to removal by the Board, and any vacancies from time to time existing shall be filled by appointment of the Board. At any time hereafter the Board may, at its sole option, relinquish to a property owners association, if there be one, the power of appointment and removal reserved herein to the Board. Such transfer of power must be evidenced in a writing which shall be recorded in the Clerk's Office of the Circuit Court of Rockingham County, Virginia in the land records.

3. Committee's Review.

A. The Committee's review is to ensure compliance and compatibility of structures and improvements within the Park. The purpose of this Committee is to create and enforce guidelines for the common good of the Park, but these guidelines must also be sensitive to the functional requirements of the user and shall not unjustly affect building layout.

B. Items of review shall include, but not be limited to:

(1) Sight lines from major access corridors, sight lines from landscaped entrances, and interior sight lines from office locations.

(2) Signage and the development of guidelines for their construction, erection and use.

(3) Items that may require concealment such as loading areas, dumpsters and unsightly mechanical equipment.

(4) Color, lighting, landscaping, compatibility of materials and building orientation. Orientation should include the building's orientation on its lot; its orientation within the Park; and the exterior arrangement of building elements such as office space, warehouse space, and manufacturing and shipping pods.

(5) The orientation of dependencies such as guard houses, dumpster enclosures, and storage buildings.

C. The Committee shall approve or disapprove plans, specifications and details within thirty (30) days from the receipt thereof. The Committee's report shall be in writing, and, in the case of disapproval, the reasons for the disapproval shall be stated.

D. The Committee shall have the right to disapprove any plans, specifications, or details submitted to it in the event the same are not in accordance with all of the provisions of these Restrictions; if the design or color scheme of the proposed building or other structure is not in harmony with the general surroundings of such lot or with the adjacent buildings or structures; if the plans and specifications submitted are incomplete; or in the event the Committee deems the plans, specifications, or details, or any part thereof, to be contrary to the interests, welfare, or rights of all or any part of the Property or the owners thereof. The decisions of the Committee shall be final, subject only to appeal to the Board in accordance with subsection 4 below.

4. Appeal to Board. Any owner of a numbered lot within the Park aggrieved by any decision of the Committee may appeal to the Board within thirty (30) days of the decision of the Committee. The appeal shall be by written petition to the Board setting forth the reasons for the appeal. The appeal shall be heard and determined within thirty (30) days from its filing. A majority vote of the Board shall overrule the Committee.

5. Committee Not Liable. Neither the Committee, the Board, nor any architect or agent of the Committee or the Board, shall be responsible in any way for any defects in any plans or specifications submitted, revised, or approved in accordance with the foregoing provisions, nor for any structural or other defects in any work done according to such plans and specifications.

1.5.2 Materials

The exterior construction of buildings within the Park may be of metal or faced (e.g., stuccoed) concrete masonry unit only if the side(s) of the building seen when entering the parcel or from Route 11 are faced with stone, brick, concrete (reinforced, pre-cast, poured in place, or tilt up), equivalent masonry construction, glass, Exterior Insulation Finish System (EIFS) (e.g., DRYVIT), architectural block, split-faced units or

a combination thereof. Otherwise, the exterior construction of buildings within the Park shall be of stone, brick, architectural block, split-faced units, glass, EIFS, vinyl or a combination of these materials.

1.5.3 All Materials, Etc. to be Consistent

On each parcel colors, materials, finishes, and building forms for all buildings shall be coordinated in a consistent manner on all elevations, facades and sides.

1.5.4 Equipment

All roof-mounted mechanical equipment, roof structures, and the like shall be shielded or screened as viewed from Route 11 or any existing or proposed publicly maintained roadway or walkway. Materials used for shielding or screening shall be harmonious with materials used in roof or side walls.

Transformers or similar above ground equipment, dumpsters, recycling equipment and containers, compactors, bailers and other waste management equipment and waste containers shall be located on grade at the rear of the building whenever possible. All such containers and equipment shall be screened so as to not be visible from any public roadway or right-of-way, adjoining parcel greenway, lake or pond area, by materials as delineated in Section 1.5.2 or vegetation sufficient when planted to provide a continuous visual screen of the area year-round.

1.5.5 Roofs

All roofing surfaces contained on a particular parcel shall be of a consistent design and material.

1.5.6 Accessory Structures

Accessory buildings and enclosures shall be of similar design and materials as the principal buildings. No more than two freestanding accessory structures shall be permitted on each parcel. For purposes of this section, any structure of less than 5,000 square feet in size shall be deemed an accessory structure.

1.5.7 Fencing

The use of fencing on any parcel other than for required screening of equipment, outdoor storage areas, or for security purposes is not permitted.

1.5.8 Outdoor Storage

All permanent outdoor storage areas shall be designed, located, or screened such that they are not visible from any adjoining parcel or publicly maintained roadway. This may be accomplished by a landscaped berm, continuous evergreen buffer, and/or with materials as delineated in Section 1.5.2. All screening plantings must be of a size and density at the time of planting sufficient to provide a continuous visual screen of the area. Black vinyl coated chain link fencing with black vinyl slats may be used to screen outdoor storage areas insofar as the exterior perimeter of the fence.

Accumulation of excessive unusable equipment, material for recycling, raw materials, damaged finished materials and products, and any other materials, substances, machinery, and parts shall not be permitted.

1.5.9 Maintenance

Each owner, tenant, or occupant of any parcel shall maintain the buildings, grounds, and improvements in a safe, neat, clean, and maintained condition and shall comply in all respects with all governmental statutes, ordinances and regulations.

Each owner, tenant, or occupant shall remove at their own expense any rubbish or trash which may accumulate on their parcel. Rubbish, trash, garbage, or other waste shall be kept only in sanitary containers. All equipment for the storage or disposal of such materials shall be kept in a clean, neat and sanitary condition. Rubbish and trash shall not be disposed of on the premises by burning or dumping.

1.6 Regulation of Improvements

No improvements shall be constructed, erected, placed, altered, maintained, or permitted on any parcel unless in conformity with the following:

16.1 Setbacks

No building or structure shall at any time be erected on any parcel within fifty (50) feet of any parcel boundary and within twenty-five (25) feet of any conservation easement boundary.

All improvements must also comply with landscaped buffer requirements as contained in Section 1.9.2 below.

1.6.2 Building Coverage

No more than 40 percent of the area of any parcel may be covered with buildings or other structures. No more than 70 percent of the area of any parcel may be covered with buildings, structures, and paving.

1.6.3 Building Height

No building elevation within the Park shall exceed 35 vertical feet in height from grade plane to the average of the highest roof surface. Prior to installation, erection, construction, or placement, any other improvements including roof-top or freestanding appurtenances and structures exceeding 35 feet from ground level must be approved by Rockingham County.

1.6.4 Utilities

All utility services, except those in existence at the time of recordation of these Covenants, including electric power, telephone, fiber optic, sanitary sewer, or steam/water lines shall be installed underground. Gas storage tanks and transformers required to be placed above ground shall be screened to the extent possible, consistent with materials delineated in Section 1.5.2 or vegetation sufficient to provide a continuous visual screen of the tank or transformer, at the time of planting.

1.6.5 Minimum Lot Size

Each lot or parcel established in the Park Area shall be not less than five (5) acres in size.

Lots and parcels shall in all other respects comply with provisions of the applicable specific underlying zoning district of Rockingham County.

1.6.6 Grading

Cut slopes and fill slopes shall have rounded edges, and the surface shall be varied and modulated to emulate the natural landforms or existing terrain, for the purpose of blending the slope into its surroundings and minimizing the artificial look. Tree plantings and other landscaping will be used to further obscure the visual impact of the slope.

1.7 *Parking Standards*

1.7.1 General

Each parcel shall contain all required parking within the parcel. Off-site parking shall not be permitted. Parking shall not be permitted on any street, and owners of parcels or their tenants shall be responsible for enforcing this requirement with respect to their employees and visitors.

1.7.2 Required Parking

Vehicle parking requirements as delineated within the Rockingham County Zoning Ordinance shall apply.

1.7.3 Design Standards

1.7.3.1 *Location*

Parking areas may be constructed on any part of a parcel except the required landscape buffer areas as provided in Section 1.9.2 below.

1.7.3.2 *Paving*

All access drives, parking areas, and outdoor storage areas shall be paved with asphaltic concrete (hot plant mix), reinforced concrete, block pavers, or equivalent materials to provide a smooth, even and dust-free surface. All vehicle movement and

parking shall be confined to these areas. Further, no parking on road shoulders shall be permitted.

1.7.3.3 Curb and Gutter

Where curbing or curb and gutter are to be provided for storm water control between the front of a primary structure and an adjacent publicly maintained right-of-way, that curbing or curb and gutter shall be concrete.

1.7.3.4 Grades

All parking areas shall be surfaced in accordance with Section 1.7.3.2 and graded with a minimum slope of 1% to ensure proper drainage.

1.7.3.5 Screening

Parking areas shall be substantially screened from view of publicly maintained rights-of-way, using hedges, dense plantings, structures, earth berms, changes in grade or walls. Vegetative screening shall be effective year-round.

1.7.3.6 Landscaping

No more than fifteen (15) perpendicular or angled spaces, or eight (8) parallel spaces, shall be permitted in a row without being interrupted by a landscaped parking island. At least 40% of the area of each island shall be planted and shall include at least one (1) shade tree of at least 2" caliper at the time of planting. Plantings shall be physically protected from cars by concrete curbing, or other equivalent material. Each island shall be at least as large as a standard parking space.

No more than two (2) parking lot driveways (and their associated parking spaces) shall be permitted side-by-side without being interrupted by a landscaped strip averaging at least four (4) feet wide. At least 50% of the area of the landscaped strip shall be planted.

1.7.4 Off-Street Loading Areas

Provision for handling all truck service shall be totally within each parcel. No off-street loading areas shall be located within the required setback adjoining any street boundary.

Loading areas shall be designed and located so that they are not visible from public roadways. The uses of earth berms, structures and/or landscape screening shall be employed to screen loading areas to the extent possible.

1.8 Sign Standards

1.8.1 General

Signs shall relate only to organizations, goods, services, or activities on the parcel upon which the sign is located. No billboards or outdoor advertising shall be permitted.

No moving signs or flashing lights on signs, roof-top signs, or pole-mounted signs shall be permitted.

All signage on a parcel shall be uniform in appearance and design. Signage shall be uniform in materials, color scheme, lettering style, proportions, lighting, and other characteristics.

1.8.2 Permanent Signs

Signage is a key element to the overall visual impact of the development. Individuality and creativity in sign design are encouraged while blending the design into the parcel's surrounding context.

1.8.2.1 Business Signs

Business signs may contain only the name, business product or service of the occupant, and may include the occupant's logo. The maximum total square footage for all business signs, including wall and monument, on a parcel is 200 square feet.

1.8.2.1.1 Wall Mounted

A single sign is permitted on the front of the principal buildings or on a side wall if clearly visible from the street.

Wall mounted signs shall not project more than 18 inches from the wall surface and shall not project above the eave line.

No sign face may exceed 100 square feet in surface area.

1.8.2.1.2 Monument Signs

One monument business sign per parcel shall be permitted, except that parcels adjoining more than one public roadway are permitted one additional monument sign.

Monument business signs shall not be less than 20 feet from any property line.

Monument business signs may be single sided or double sided, but no sign face may exceed 100 square feet in surface area.

1.8.2.2 Informational Signs

Informational signs may be erected to direct traffic or pedestrian movements or to give warnings of restricted areas or hazards and the like.

The number of informational signs should be limited to the smallest number possible to convey the necessary information.

Informational signs should conform to Section 1.8.1 paragraph 3 above concerning uniformity of design within a given project or parcel.

1.8.3 Temporary Signs

1.8.3.1 For Sale or Lease Signs

Signs advertising a parcel or building for sale or for lease are allowed.

Sale or lease signs shall be limited to one sign per parcel or building, but such signs may be single or double faced. Sale or lease signs may not exceed 20 square feet per sign face and may not exceed 10 feet in height.

1.8.3.2 Construction Signs

Upon commencement of construction, one sign may be erected which may identify architects, engineers, contractors, financing sources, and other establishments providing services for development or construction. This sign may not exceed 50 square feet or 10 feet in height.

Construction signs may contain several structural elements identifying various establishments providing services, or may be composed of a single element. In either case, construction signs must present a neat and unified appearance. Construction signs may be single faced or double faced.

As soon as the building is occupied, all construction signs shall be removed.

1.8.4 Maintenance

Maintenance of all signs shall be required by all owners, tenants, and occupants. Signs shall be kept cleaned and maintained so as to preserve the state of quality that existed at the time of installation.

1.9 Landscaping Standards

1.9.1 General

The Park is intended to have a park-like setting with a strong emphasis on the landscaped environment. This emphasis will provide an overall visual continuity throughout the Park and will serve as a backdrop for the development of each individual parcel. During the individual parcel development stage, the designer shall give careful consideration and analysis to respond to surrounding site components such as site context, open space, landmarks, views and vistas, streetscapes and the protection of existing vegetation. A landscape plan shall be submitted as part of the Site Plan for approval by Rockingham County and shall indicate locations of any large existing trees (6" caliper and larger) and tree masses.

All disturbed open areas on each parcel not occupied by buildings, structures, outdoor storage areas, paved areas, parking areas, loading areas, driveways, or walkways shall be suitably graded and drained and shall be landscaped with lawns, trees, shrubs, or suitable ground cover.

All landscaping required hereunder or otherwise to be provided on any parcel shall be completed within 60 days after the substantial completion of any buildings to be

constructed on the parcel. However, if weather conditions do not at such time permit completion, then such landscaping shall be completed as soon thereafter as weather conditions allow.

1.9.2 Landscape Buffer Areas

Upon each parcel, there shall be provided a landscape buffer area not less than 50 feet wide along all parcel boundaries. In addition, it shall be the parcel owner's or tenant's responsibility to landscape and maintain the area between the property boundary and the curb or paved area of streets adjacent to parcels.

The landscape buffer areas shall be reserved for the planting of lawns, trees, shrubs, or ground cover and no structures or equipment of any nature except underground utility equipment, signs, fighting, and access roads shall be permitted. In addition, vegetative screening and buffering will be installed where required by the Rockingham County Zoning Ordinance.

1.9.3 Protection of Existing Vegetation

1.9.3.1 Tree Protection Plan

A Tree Protection Plan shall be submitted for approval by Rockingham County whenever a site plan is required by the County's ordinances. At a minimum, the plan shall show the following:

- A) Existing wooded areas and trees with a Diameter Breast Height (DBH) of 6" or greater, including those within the wooded areas, with individual trees identified by DBH and type, e.g., "12" Oak", and symbols approximating the current driplines of the trees or wooded;
- B) The outlines of areas in which development is restricted by law, such as designated and approximated floodways and floodplains, and wetlands;
- C) Minimum building lines and landscape buffer outlines;
- D) The limits of land-disturbing activities;
- E) Locations of tree protection measures and detailed drawings and descriptions of those measures, as necessary.

1.9.3.2 Tree Protection Measures

For trees which are to be preserved, measures shall be taken to protect them from the effects of construction activities. Such measures should include, as appropriate, root zone protection, protective fencing, aeration systems, drainage systems, tree wells, and minimization of vehicular traffic.

Reference information for the protection of existing trees can be found in the Virginia Erosion and Sediment Control Handbook.

1.9.3.3 Tree Replacement

Trees removed for development shall be replaced on-site with new trees with a minimum caliper of 2" so as to satisfy canopy coverage requirements specified in 1.9.4.2 below.

1.9.4 Minimum Tree Planting

1.9.4.1 Definitions

For definitions applicable to provisions of this section, see Section 1.3. Definitions above.

1.9.4.2 Canopy Coverage

One large tree or two small trees shall be planted or shall exist per 4,000 gross square feet of Landscaped Area, as defined above.

Existing special vegetation areas which are to be preserved shall be managed to remain in their existing or naturally progressing condition, to the degree possible or as required by law.

Wooded areas and meadow areas shall be set back at least 20' from buildings and paved areas, or as required by the fire marshal whichever is greater.

1.9.4.3 Plant Selection

Use of plant species which are native to Rockingham County is encouraged. Diversity of species within each site is also encouraged. Aggressive or nuisance non-native species shall not be introduced into the Park.

1.9.5 Maintenance

All landscaping on each parcel and on the landscaped portion of any abutting street shall be properly maintained by the owner or tenant of the parcel. Maintenance shall include all necessary planting, cutting, watering, fertilizing, aerating, seeding, spraying, pruning, weeding, and required replacements.

1.10 Exterior Lighting

1.10.1 General

The intent is to create a consistent exterior lighting system for the Park. All lighting systems shall be designed so as not to produce significant illumination or glare beyond the parcel on which it is located. All electric wiring shall be installed underground. In addition to lighting provisions set forth herein, all lighting shall comply with requirements applicable to the underlying zoning district of each parcel.

1.10.2 Mounting Height

The maximum permitted mounting height for any lighting fixture shall be 25 feet. Fixtures designed to illuminate pedestrian walkways shall have a maximum height of 12 feet.

1.10.3 Lighting Type

Low bollard fixtures and landscape lighting are recommended for walks and building entries. To minimize glare and light spillover, light fixtures greater than 12 feet tall shall use luminaries with “cut-off “ optics, light-diffusing shields, or equivalent. Lighting systems will be designed to achieve an average maintained horizontal illumination level at the ground surface of 1-2 foot-candles, with luminaries spaced to achieve a uniformity ratio (average: minimum) of 6:1 within the lighted area.

To enhance pedestrian safety and security, lighting systems shall be designed to produce a broad color spectrum to emulate natural color balance with high definition and high resolution.

1.10.4 Building and Sign Illumination

Building and sign accent illumination shall be permitted utilizing wall mounted or set-back methods.

Building and sign accent illumination shall be installed and aimed so that glare will neither hinder vehicular or pedestrian traffic, nor present a hindrance to operations on-site or on any adjacent parcel.

Building mounted floodlights are permitted only if they are shielded so that direct glare is not visible from surrounding properties and adjoining roadways.

1.11 Noise

It is the intent of this covenant to promote an environment within the Park free from noise that jeopardizes the health or welfare of, or that creates annoyance to, the owners, tenants, or occupants of the Park. Therefore, no person shall make, continue, or cause to be made, continued, or permitted, any noise disturbance within the Park not necessary and incidental to commercial and industrial uses permitted therein. Noise which is incidental and necessary to permitted commercial and industrial uses shall be minimized to the maximum extent practical. Particular emphasis shall be given to preventing noise generated by normal commercial and industrial operations from being clearly audible beyond the boundaries of the parcel on which operations are conducted.

1.12 Environmental Protection

All owners, tenants, and occupants shall use and manage their parcel and conduct their operations in a manner which ensures continuous compliance with all applicable and governing local State, and federal environmental laws, ordinances, regulations, rules, policies, and procedures.

1.13 Amenities

1.13.1 Greenways

All areas designated as greenways on the recorded subdivision plat of the Park shall be owned and maintained by the County. It is intended that these areas be provided for the use and benefit of Park owners, occupants, and tenants, and the general public. Uses to be permitted in the greenways shall be determined and regulated by the Rockingham County Board of Supervisors.

1.13.2 Natureways

All areas designated as natureways on the recorded subdivision plat of the Park shall be owned and maintained as natural areas by the County to preserve and protect waterways and wildlife habitat. It is intended that public access be prohibited in designated natureways.

1.13.3 Conservation Easements

Property within conservation easements shall be conveyed to Park owners, occupants, and tenants and shall be maintained as natural areas. The easements will be reserved and their terms and conditions shall be enforced by the County. It is intended that these areas provide natural buffers between the Park and adjoining properties. Uses and improvements within conservation easements shall be restricted to the installation and maintenance of utilities. Public access to conservation easements shall be prohibited and no development except that for the necessary provision of utility services shall be permitted within the easements.

1.13.4 Preservation Area(s)

Preservation area(s) as designated on the recorded subdivision plat of the Park shall be owned and maintained by the County as historic preservation and interpretation areas. The purpose of the area(s) is to preserve, protect, and provide public access to structures and items associated with the site of the Park which are of archeological and historical value. Preservation area(s) shall be regulated by the Rockingham County Board of Supervisors.

2.1 Compatibility with Comprehensive Plan Goals and Objectives

2.1.1 Economic Development

The economic development goal of the Comprehensive Plan is: "To enhance the economic base and employment opportunities in Rockingham County." This goal is directly promoted by the proposed project.

3 Miscellaneous

3.1 Further Subdivision

No numbered lot created in the Park shall be further subdivided or used for access to any property lying outside the boundaries of the Park without the express written approval of the Declarant, which approval shall be recorded in the Clerk's Office of the Circuit Court of Rockingham County, Virginia in the land records.

3.2 Remedies

3.2.1 The Board or any party to whose benefit these Restrictions inure may proceed at law or in equity to prevent the occurrence or continuation of a violation of any of these Restrictions, and the court in any such action may award the successful party reasonable expenses in prosecuting such action, including attorney's fees.

3.2.2 The remedies hereby specified are cumulative, and this specification of them shall not be taken to preclude an aggrieved party's resort to any other remedy at law, in equity, or under any statute. No delay or failure on the part of an aggrieved party to invoke an available remedy in respect of a violation of any of these Restrictions shall be held to be a waiver by that party of (or an estoppel of that party to assert) any right available to him upon the recurrence or continuation of said violation or the occurrence of a different violation.

3.3 Grantee's Acceptance

3.3.1 The grantee of any numbered lot subject to the coverage of this Declaration, by acceptance of a deed conveying title thereto, or the execution of a contract for the purchase thereof, whether from the Declarant or a subsequent owner of such numbered lot, shall accept such deed or contract upon and subject to each and all of these Restrictions and the agreements herein contained, and also the jurisdiction, rights, and powers of the Declarant, and by such acceptance shall for itself, its successors and assigns, covenant, consent and agree to and with the Declarant, and to and with the grantees and subsequent owners of each of the numbered lots subject to these Restrictions to keep, observe, comply with, and perform said Restrictions.

3.3.2 Each such grantee also agrees, by such acceptance, to assume, as against the Declarant, its successors and assigns, all of the risks and hazards of ownership or occupancy attendant to such numbered lot.

3.3.3 Each such grantee agrees to complete underground electrical service to its respective numbered lot. All such extensions of underground electrical services shall be made by Virginia Power or Shenandoah Valley Electric Cooperative, their successors and assigns, which will be paid by the property owner at established rates for underground service on file with and approved by the Virginia State Corporation Commission, such payments to be made prior to the services being extended.

3.4 Severability

Every one of the Restrictions is hereby declared to be independent of, and severable from, the rest of the Restrictions and of and from every other one of the Restrictions and of and from every combination of the Restrictions. Therefore, if any of the Restrictions shall be held to be invalid or to be unenforceable or to lack the quality of running with the land, that holding shall be without effect upon the validity, enforceability, or "running" quality of any other one of the Restrictions.

3.5 Captions

The captions preceding the various paragraphs and subparagraphs of these Restrictions are for convenience of reference only, and none of them shall be used as an aid to the construction of any provision of the Restrictions. Wherever and whenever applicable, the singular form of any word shall be taken to mean or apply to the plural, and the masculine form shall be taken to mean or apply to the feminine or to the neuter.

3.6 Amendments

These covenants may be amended only by the consent of the owners of not less than seventy-five percent (75%) of the numbered lots subject to these Restrictions and the consent of the Board. Amendments to these covenants shall be recorded in the Clerk's Office of the Circuit Court of Rockingham County, Virginia in the land records and shall become effective upon recordation. Each amendment shall be executed by the property owners which approve such amendment and the Board to evidence its consent to such amendment.

3.7 Additional Land

The Declarant reserves for itself, its successors and assigns, the right without the approval of the owners of the numbered lots (except the owner of the land so submitted), to submit all or any portion of the Additional Land (as hereinafter defined) to the provisions of this Declaration. The Declarant may exercise such right by recording one or more amendments to this Declaration submitting the land described therein to this Declaration ("Supplementary Declarations"). Any Supplementary Declaration may contain such additions to the provisions in this Declaration as may be necessary to reflect the different character of the land described therein and as are not inconsistent with the overall scheme of this Declaration; provided, however, that such additions shall not apply to any numbered lot previously submitted to this Declaration without the written consent of the owner of the numbered lot subject to the additional provisions. Upon recordation of a Supplementary Declaration submitting land to this Declaration, the provisions of this Declaration shall apply to the land thereby added as if such land were originally part of the Property submitted to this Declaration. The Declarant's right to submit the

Additional Land to this Declaration may be terminated only upon recordation of an instrument relinquishing such right. If the Declarant does not submit the Additional Land to this Declaration, such Additional Land may be developed in any manner allowable under local zoning and subdivision ordinances without regard to the restrictions in this Declaration. As used herein, the term “Additional Land” shall mean land zoned business or industrial and located contiguous to the Property.

3.8 Transfer of Declarant Rights

The Declarant may transfer rights created or reserved in this Declaration to any person acquiring those portions of the Property and/or Additional Land owned by the Declarant at the time of transfer by an instrument evidencing the transfer recorded in the land records. The instrument shall not be effective unless it is executed by the transferor and transferee. In the event of such a transfer, the result of which is that no portion of the Property or the Additional Land is owned thereafter by Rockingham County, Virginia, notwithstanding the provisions of Section 1.5.1 of this Declaration, the Committee shall be appointed by the successor Declarant and appeals of decisions of the Committee shall be made to the successor Declarant.

In witness whereof, County of Rockingham, Virginia, has caused this Declaration to be executed as of the ____ day of _____, 2005.

COUNTY OF ROCKINGHAM

By _____
Chairman of Board of Supervisors

ATTEST:

Secretary

STATE OF VIRGINIA
CITY/COUNTY OF _____, to-wit:

The foregoing instrument was acknowledged before me in the jurisdiction aforesaid this ____ day of _____, 2005, by Pablo Cuevas, Chairman of the Rockingham County Board of Supervisors.
My commission expires _____.

Notary Public

STATE OF VIRGINIA
CITY/COUNTY OF _____, to-wit:

The foregoing instrument was acknowledged before me in the jurisdiction aforesaid this ____ day of _____, 2005, by Joseph S. Paxton, Secretary of the Rockingham County Board of Supervisors.
My commission expires _____.

Notary Public

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DEPUTY COUNTY ADMINISTRATOR'S STAFF REPORT.

The Board received and reviewed Mr. King's staff report dated April 22, 2005, including information concerning stream repairs and the progress on the Technological and Industrial Park (TIP).

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FINANCE DIRECTOR'S STAFF REPORT.

Mr. Allmendinger did not have a written report.

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PUBLIC WORKS DIRECTOR'S STAFF REPORT.

The Board received and reviewed Ms. Hoover's staff report dated April 21, 2005, including information concerning Countryside water system; Penn Laird Drive and Water Tower Road sewer; Lakewood/Massanetta Springs pump station, Spotswood High School water tank and waterline extension, Water/Sewer Specifications, McGaheysville WWTP, City of Harrisonburg Waste-to-Energy Plant, Phase III expansion of the landfill, Grassy Creek Tank, and water production.

On motion by Supervisor Breeden, seconded by Supervisor Kyger and carried by a vote of 5 to 0, voting recorded as follows: AHREND - AYE; BREEDEN - AYE; CUEVAS - AYE; FLOYD - AYE; KYGER - AYE; as recommended by the Public Works Committee, the Board approved Water & Sewer Standards and Specifications, a copy of which is attached to and made a part of these minutes.

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COMMUNITY DEVELOPMENT DIRECTOR'S STAFF REPORT.

The Board received and reviewed Mr. Vaughn's staff report dated April 8, 2005, including information concerning evaluation of possible Virginia Byway (Board showed no interest in this proposal), Agricultural Advisory Committee vacancies, Building activity, annual Comprehensive Plan review, priority projects, tabled requests, and upcoming requests.

On motion by Supervisor Kyger, seconded by Supervisor Ahrend and carried by a vote of 5 to 0, voting recorded as follows: AHREND - AYE; BREEDEN - AYE; CUEVAS - AYE; FLOYD - AYE; KYGER - AYE; the Board reappointed to the Agricultural Advisory Committee, for four-year terms, ending on

January 31, 2009: David Hughes (District 1), Jonathan May (District 1), Dan Myers (District 3) and Roscoe Wine (District 4.

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COMMITTEE REPORTS.

The Board heard Committee Reports by Board members and staff.

Chairman Cuevas advised that:

- a. He will be attending a meeting concerning a request from Shenandoah County to join in expansion of the jail facilities.
- b. He and members of staff will meet with Hardy County representatives to discuss cellular towers.

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ADJOURNMENT.

By consensus, the Board adjourned the meeting at 11:16 p.m.

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_____,
Chairman